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June 18, 2001

*VIA FACSIMILE*

Jack P. Broadbent, Director  
Air Division  
Nancy Marvel, Regional Counsel  
EPA, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105-3901

Re: Baldwin Hills Energy Facility No. 1 Project: Applicability of New Source  
Review Alternatives Analysis

Dear Mr. Broadbent and Ms. Marvel:

The South Coast Air Quality Management District requests your assistance in determining whether the Clean Air Act requires an alternatives analysis before issuing the air permit for the above-referenced project. No alternatives analysis has been performed, because the project is covered by a statutory exemption to the California Environmental Quality Act.

Facility Description

La Jolla Energy Development Corporation/Stocker Resources has filed an emergency permitting application with the California Energy Commission for the Baldwin Hills Energy Facility No. 1. The application was deemed complete on May 24, 2001. The proposed project is a 53 MW simple-cycle power plant which would be located on the Inglewood oil fields, in an unincorporated area of Los Angeles County. The project site is located within an area currently leased by Stocker Resources, Inc. for the production of natural gas and oil. To the north and east of the oilfield is an existing park, the Kenneth Hahn State Recreation area. The facility would be approximately 700 feet from the park. The site is within the boundary of the Baldwin Hills Conservancy, created by SB 1625,

Murray (2000).<sup>1</sup> The Conservancy is in the process of turning the entire two-square mile area within the Conservancy's jurisdiction into the Baldwin Hills State Park.

The Baldwin Hills Project proposes to initially operate as simple cycle units (2 reconditioned General Electric LM 2500 gas turbines rated at 25 MW each). During Phase I, the simple cycle units will operate with water injection only for NO<sub>x</sub> control. NO<sub>x</sub> emissions are expected to be 20 ppm during Phase I. This would not meet AQMD BACT requirements and therefore our AQMD permit may not be issued for Phase 1. However, the facility may request authority to operate pursuant to an abatement order issued by the Hearing Board during Phase I. Construction of Phase I is expected to take 3-4 months, with operation anticipated before September 30 (estimated September 6). In March 2002, the project will begin installation of Phase II, including a heat recovery steam generator, an SCR system for NO<sub>x</sub> control, and an oxidation catalyst for CO (and some VOC) control. Use of steam injection and SCR will reduce NO<sub>x</sub> concentrations to 2.5 ppm. This level will meet BACT. The facility qualifies as a "major" polluting facility under Rules 2005 and 1303 and as a "major source" under Clean Air Act Sections 182(e) and 182(f).<sup>2</sup>

### Legal Discussion

As you know, Clean Air Act Section 172(c)(5) requires a state implementation plan to include rules requiring permits for construction and operation of new or modified major stationary sources. Section 173 specifies that permits to construct such new or modified major sources may be issued only if certain requirements are met. One of those requirements is for an alternatives analysis. Section 173(a)(5) provides that the permit may be issued only if:

“an analysis of alternative sites, sizes, production processes, and environmental control techniques for such proposed source demonstrates that benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.”

In accordance with the Clean Air Act, the District has adopted New Source Review rules which require an alternatives analysis for major sources. However, pursuant to those rules, compliance with CEQA is used to satisfy the requirements for an alternatives analysis. The District's New Source rules have been approved by EPA into the State Implementation Plan and therefore have been determined to comply with the Clean Air Act.

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<sup>1</sup> (Pub. Res. Code §§32550-32580).

<sup>2</sup> Further information may be found at <http://www.energy.ca.gov/sitingcases/peakers/baldwin/index.html>.

District Rule 1303(b)(5)(A) requires the applicant to conduct an alternatives analysis for any new major polluting facility or major modification at an existing major polluting facility. However, District Rule 1303(b)(5)(D) states in pertinent part that:

“The requirements of subparagraph (b)(5)(A) may be met through compliance with the California Environmental Quality Act in the following manner:

“(i) if the proposed project is exempt from California Environmental Quality Act analysis pursuant to a statutory or categorical exemption pursuant to Title 14, California Code of Regulations Sections 152609 to 15329, subparagraph (b)(5)(A) [the alternatives analysis] shall not apply to that project.”<sup>3</sup>

The Baldwin Hills Energy Project has been determined to be covered by a statutory exemption to CEQA as an emergency project under Public Resources Code Section 21080(b)(4), which provides that “(b) this division does not apply to any of the following activities . . . (4) specific actions necessary to prevent or mitigate an emergency.” On January 17, 2001, California’s Governor proclaimed a state of emergency due to the energy shortage in the State of California. Subsequently the Governor issued Executive Order D-26-01 on February 8, 2001, and Executive Order D-28-01 on March 7, 2001, to provide for expedited permitting of peaking or renewable power plants for construction or operation by July 31, 2001 (EO D-26-01), later extended to September 30, 2001 (EO D-28-01). The Governor’s Executive Order D-28-01 declared: “all proposals processed pursuant to Public Resources Code Section 25705 and Executive Order D-26-01 or this order shall be considered emergency projects under Public Resources Code Section 21080(b)(4).”

Based on the emergency exemption, neither the applicant nor the Energy Commission has prepared an alternatives analysis for the project. Energy Commission staff has prepared a “Staff Assessment for Emergency Permit” which discusses environmental impacts of the project. Also, the project site was included on a list prepared pursuant to Executive Order D-26-01 which specified that “the Energy Commission shall conduct a study of potential peaking power plant sites in the State and prepare a report to the Governor by February 21, 2001, identifying those areas of the State that would benefit from installation of peaking power plants to augment supplies and ensure reliability through the summer of 2003.”

Numerous concerns have been raised concerning the location of the proposed plant adjacent to an existing State Recreation Area and within the boundaries of the proposed Baldwin Hills State Park.

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<sup>3</sup> Rule 1303(d)(5)(D) further describes compliance through use of a negative declaration or environmental impact report, as appropriate. Parallel provisions are found in the District’s RECLAIM rules, Rule 2005(g).

We note that the Clean Air Act contains provisions evidencing particular concern for the siting of major polluting facilities in a manner which may affect national parks. (See, §162 defining certain international and national parks as Class I areas.) State parks and recreational areas are not listed in this section, but we believe potential effects on state parks would logically be considered in an alternatives analysis under Section 173(a)(5).

Community concerns have been raised about potential effects on sensitive receptors, including children using the existing state recreational area. In addition, community members are concerned that placing a new power plant in the existing jurisdiction of the Baldwin Hills Conservancy may jeopardize the future development of the Baldwin Hills State Park. Energy Commission staff has proposed a condition of certification to address this concern which would require the power plant to cease operations within 30 years of operation, upon cessation of oil field operations, or upon acquisition of the property by the Baldwin Hills Conservancy, whichever is soonest. Ordinarily, a CEQA analysis would require an EIR if “the project has the potential to achieve short-term environmental goals to the disadvantage of long-term environmental goals.” (CEQA Guidelines §15065).

According to the terms of the District’s rules, a project is normally not required to undergo an alternatives analysis where it is exempt from CEQA since CEQA is normally considered equivalent to the Clean Air Act alternatives analysis. However, in approving the AQMD rules, EPA may have assumed that a CEQA exemption could not be invoked where there is a “reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.” (CEQA Guidelines, §15300.2(c).) However, this guideline applies to categorical exemptions only, not to the emergency exemption involved in this case.<sup>4</sup> Indeed, the purpose of the emergency exemption is to provide an escape from the EIR requirement even where there may be a significant impact. Western Municipal Water Dist. v. Superior Court (1986) 187 Cal.App.3d 1104, 1113; 232 Cal.Rptr. 359, 364. Under these circumstances, we are uncertain whether the CEQA exemption should be deemed equivalent to the alternatives analysis.

We seek EPA guidance concerning whether an alternatives analysis is required in the unique circumstances of this case. Such guidance will be important for the California Energy Commission as well since the Commission is required to assure that any energy facility it certifies meets all the requirements of federal law. (Pub. Res. Code §25525.)

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<sup>4</sup> “Categorical exemptions” are classes of projects which the Secretary of Resources has determined not to have a significant effect on the environment. (Pub. Res. Code §21084; CEQA Guidelines §15300. This facility would not qualify for the most analogous categorical exemption, which is for cogeneration facilities less than 50 MW which do not increase air emissions. (CEQA Guidelines, §15329.)

We would be pleased to discuss this matter with EPA at your earliest convenience.  
Thank you for your assistance in this regard.

Very truly yours,

BARBARA BAIRD  
District Counsel

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